

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR 08-254

ROGER DYLAN RUDD
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 22, 2008

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT,
[NOS. CR-2004-177, 2004-183,
& 2005-17]

HONORABLE HAROLD S. ERWIN,
CIRCUIT JUDGE

AFFIRMED AS MODIFIED

EUGENE HUNT, Judge

Appellant Roger Dylan Rudd appeals the sentence he received when the Jackson County Circuit Court revoked his suspended sentence. He contends that the court sentenced him to more time than allowed under the law, making the sentence illegal and void. The State concedes that the circuit court erred. We agree and modify appellant's sentence to comply with Arkansas law.

Appellant's suspended imposition of sentence was part of his punishment under a guilty plea entered February 4, 2005. The guilty plea involved several offenses covering three cases, and appellant was sentenced as follows: sixty months' imprisonment imposed for theft by receiving (with thirty-six months' suspended imposition of sentence ("SIS")), twelve months' imprisonment for fleeing by vehicle (no SIS), six months' imprisonment for fleeing on foot

(no SIS), twelve months' imprisonment for possession of drug paraphernalia (no SIS), sixty months' imprisonment for theft of property (with thirty-six months' SIS), and sixty months' imprisonment for a second count of theft of property (with thirty-six months' SIS). All sentences were to run concurrently; therefore, the total time to be served on all of the offenses was twenty-four months and the suspended sentence was thirty-six months. Rudd was taken into custody on February 4, 2005, and was released on parole on March 2, 2006.

The State filed a petition to revoke appellant's suspended imposition of sentence on September 14, 2007, and amended its petition on October 29, 2007. Following a hearing on October 30, 2007, the trial court revoked appellant's suspended sentence and sentenced him to sixty months in the Arkansas Department of Correction. Appellant does not challenge the revocation of his suspended sentence. Instead, he contends that the sixty-month sentence the trial court imposed upon revoking his suspended sentence was illegal and void. We agree.

Sentencing in Arkansas is entirely a matter of statute. Ark. Code Ann. § 5-4-104(a) (Repl. 2006). A sentence is void or illegal when a trial court lacks the authority to impose it. *Mayes v. State*, 351 Ark. 26, 89 S.W.3d 926 (2002). Arkansas Code Annotated section 5-4-307(c) (Repl. 2006) provides, "If a court sentences a defendant to a term of imprisonment and suspends imposition of sentence as to an additional term of imprisonment, the period of the suspension commences to run on the day the defendant is lawfully set at liberty from the imprisonment." The suspended portion of Rudd's sentence commenced running when he was released from confinement, and the trial court did not have the authority to require Rudd

to serve more than the remainder of his original sentence. See *Lyons v. State*, 35 Ark. App. 29, 813 S.W.2d 262 (1991); *Chadwell v. State*, 80 Ark. App. 133, 91 S.W.3d 530 (2002).

When an error has nothing to do with the issue of guilt or innocence and relates only to punishment, we may correct it by reducing the sentence in lieu of reversing and remanding. *Ward v. State*, 97 Ark. App. 294, 248 S.W.3d 489 (2007) (citing *Brown v. State*, 82 Ark. App. 61, 110 S.W.3d 293 (2003)); see also *Chadwell, supra* (reversing and remanding because the record did not indicate precisely how much time remained in Chadwell's ten-year period of suspension). Here, the trial court clearly intended to sentence appellant to the maximum time allowed under the law. We know the date of appellant's release, March 2, 2006, which is the date from which his suspended sentence began to run. When his suspended sentence was revoked by entry of the judgment and commitment order on November 2, 2007, appellant had sixteen months remaining on his thirty-six months' suspended imposition of sentence. Therefore, his date of release is thirty-six months from March 2, 2006 -- or March 2, 2009.

Affirmed as modified.

PITTMAN, C.J., and BAKER, J., agree.